

1 BILL NO. S-83-09-08

2 SPECIAL ORDINANCE NO. S-191-83

3 AN ORDINANCE approving a Contract
4 by the City of Fort Wayne by and
through its Board of Public Works
5 and Land Excavating, Inc., for Fourth
Street Spur Renovation - Contract
No. 83-W-1.

6
7 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
8 OF THE CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. The annexed Contract, made a part hereof,
10 by the City of Fort Wayne by and through its Board of Public
11 Works and Land Excavating, Inc., for Fourth Street Spur Renovation -
12 Contract 83-W-1, is hereby ratified, and affirmed and approved
13 in all respects. The work under said Contract requires:

14 the installation of the railroad spur reno-
15 vation along Fourth Street from Clinton
16 Street eastward 120+ feet to the north
right of way line of Fourth Street;

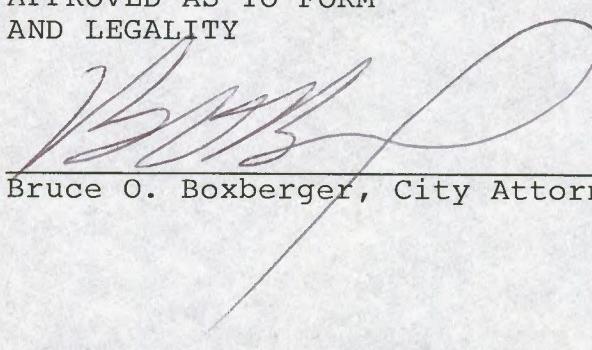
17 the Contract price is Sixteen Thousand Two Hundred and No/100
18 Dollars (\$16,200.00).

19 SECTION 2. Prior Approval was received from Council
20 with respect to this Contract on September 6, 1983. Two (2)
21 copies of the Contract attached hereto are on file with the City
22 Clerk and are available for public inspection.

23 SECTION 3. That this Ordinance shall be in full force
24 and effect from and after its passage and any and all necessary
25 approval by the Mayor.

26
27 Samuel J. Talarico
28 Councilmember

29 APPROVED AS TO FORM
30 AND LEGALITY

31 
32 Bruce O. Boxberger, City Attorney

Read the first time in full and on motion by Talarico, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Budie Wds (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19_____, at _____ o'clock M., E.S.T.

DATE: 9-13-83

Sandra F. Kennedy
CITY CLERK

Read the third time in full and on motion by Talarico, seconded by Lin Dunta and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	—	—	—	—	—
<u>BRADBURY</u>	✓	—	—	—	—
<u>BURNS</u>	✓	—	—	—	—
<u>EISBART</u>	✓	—	—	—	—
<u>GiaQUINTA</u>	✓	—	—	—	—
<u>SCHMIDT</u>	✓	—	—	—	—
<u>SCHOMBURG</u>	✓	—	—	—	—
<u>SCRUGGS</u>	✓	—	—	—	—
<u>STIER</u>	✓	—	—	—	—
<u>TALARICO</u>	✓	—	—	—	—

DATE: Sept 27, 1983

Sandra F. Kennedy
- CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. 1-191-83 on the 27th day of Sept., 1983.

ATTEST:

(SEAL)

Sandra F. Kennedy
CITY CLERK

Bay A. Elbert
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of Sept., 1983, at the hour of 11:30 o'clock P.M., E.S.T.

Sandra F. Kennedy
CITY CLERK

Approved and signed by me this 30th day of September 1983, at the hour of 12 o'clock P.M., E.S.T.

Win Moses Jr.
WIN MOSES, JR. - MAYOR

73-166-22

8/31/83

CONTRACT NO. 83-W-1

BOARD ORDER NO. 105-83

WORK ORDER NO. 63618

THIS CONTRACT made and entered into in triplicate this 31st day of August, 1983 by and between Land Excavating Inc., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER,

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of:

the railroad spur renovation along Fourth Street from Clinton Street eastward 120± feet to the north right of way line of Fourth Street,

all according to Fort Wayne Water Utility Drawing No. Y-10575, Sheet 1 of 1, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the sum of \$16,200 (sixteen thousand two hundred dollars). In the event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Water Engineering Department less the aggregate of previous payments, will be paid by Owner to the Contractor.

WEBIDD
JOB A
remove 9/1/83

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Water Engineering Department to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act (I.C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Sub-contractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder, at the time the Completion Affidavit is filed, shall also file a Manpower Utilization Report for this project.

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935.

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 83-W-1.
- b. Instructions to Bidders for Contract No. 83-W-1.
- c. Contractor's Proposal Dated August 10, 1983.
- d. Fort Wayne Water Utility Engineering Department Drawing No. Y-10575.
- e. Supplemental Specification for Contract No. 83-W-1.
- f. American Railway Engineering Association (AREA) Specifications latest revision.
- g. Indiana State Highway Specifications latest revision.
- h. Indiana Manual on uniform control devices latest revision.
- i. Workman's Compensation Act (I.C. 22-3-2-1).
- j. Non Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- k. Prevailing Wage Scale.
- l. Performance and Guaranty Bond.
- m. Minority/Female Employment Requirements Option

ARTICLE 9. GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the Contractor shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the water main by the City.

ARTICLE 10. INDEMNITY

Contractor shall furnish to Owner, within ten (10) days of the date hereof, a certificate from an insuror acceptable to Owner showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to Owner.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility of the Owner, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 45 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

LAND EXCAVATING INC.

BY: Jack Braun
Jack Braun, President

BY: Joy Braun
Joy Braun, Secretary

8-23-83

CITY OF FORT WAYNE, INDIANA

BY: Win Moses
Win Moses, Jr., Mayor

BOARD OF PUBLIC WORKS

Stephen A. Bailey
Stephen A. Bailey, Chairman

ATTEST:

Helen V. Gochenour
Helen V. Gochenour, Clerk

Betty R. Collins, Member

Jack Wilson, Sr.
Jack Wilson, Sr., Member

APPROVED AS TO FORM AND LEGALITY:

R. J. Schaefer

ASSOCIATE CITY ATTORNEY

Approved by the Common Council of the City of Fort Wayne on _____ day of
_____, 19 _____.

Special Ordinance No. _____.

RELIANCE INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

PERFORMANCE BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

LAND EXCAVATING, INC.

P. O. Box 192

LaOtto, IN 46763

as Principal, hereinafter called Contractor, and, RELIANCE INSURANCE COMPANY, a corporation of the State of Pennsylvania, with its Head Office at Philadelphia, Pennsylvania, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

Board of Public Works

City of Fort Wayne

City-County Building

Fort Wayne, IN

as Obligee, hereinafter called Owner, in the amount of ...Sixteen Thousand, Two Hundred & No/100.....

..... Dollars (\$ 16,200.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated August 23, 1983 , entered into a contract with Owner for Contract 83-W-1 Railroad Spur Renovation

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this twenty-third

day of August

19 83

x *Jay Braun*
(Witness)

LAND EXCAVATING, INC.

(Seal)

By: x *Jack Braun, Pres.*

(Principal)

(Title)

John Wood
(Witness)

RELIANCE INSURANCE COMPANY
By: *Fred L. Tagtmeyer*
(Title)

Fred L. Tagtmeyer Attorney-in-Fact

RELIANCE INSURANCE COMPANY

HEAD OFFICE, PHILADELPHIA, PENNSYLVANIA

LABOR AND MATERIAL PAYMENT BOND

The American Institute of Architects, AIA Document A311, February 1970 Edition.

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that (Here insert full name and address or legal title of Contractor)

LAND EXCAVATING, INC.

P. O. Box 192

LaOtto, IN 46763

as Principal, hereinafter called Principal, and, RELIANCE INSURANCE COMPANY, a corporation of the State of Pennsylvania, with its Head Office at Philadelphia, Pennsylvania, as Surety, hereinafter called Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

Board of Public Works

City of Fort Wayne, City-County Building

Fort Wayne, IN

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of **Sixteen**

Thousands, Two Hundred & No/100..... Dollars (\$ 16,200.00)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated **August 23, 19 83**, entered into a contract with Owner for **Contract 83-W-1 Railroad Spur Renovation**

in accordance with Drawings and Specifications prepared by (Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

BILL NO. S-83-09-08

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN ORDINANCE approving a Contract by the City of Fort Wayne by and through its Board of Public Works and Land Excavating, Inc., for Fourth Street Spur Renovation - Contract No. 83-W-1

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

SAMUEL J. TALARICO, CHAIRMAN

Samuel J. Talarico

VICTURE L. SCRUGGS, VICE CHAIRMAN

Victure Scruggs

MARK E. GIAQUINTA

Mark E. Giacinta

PAUL M. BURNS

Paul M. Burns

ROY J. SCHOMBURG

Roy Schomburg

Concurred 9-27-83 Sandra F. Kennedy

6414
Admn. Appr.

TITLE OF ORDINANCE Fourth Street Railroad Renovation - Contract No. 83-W-1

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE This is for the installation of the railroad spur renovation along Fourth Street from Clinton Street eastward 120+ feet to the north right of way line of Fourth Street. Contractor Land Excavating, Inc.

PRIOR APPROVAL RECEIVED 9/6/83

EFFECT OF PASSAGE Railroad spur renovation.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$16,200

ASSIGNED TO COMMITTEE